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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,691	09/19/2001	David H. Harkness	28049/34692A	1414

34431 7590 08/20/2007  
HANLEY, FLIGHT & ZIMMERMAN, LLC  
150 S. WACKER DRIVE  
SUITE 2100  
CHICAGO, IL 60606

EXAMINER
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SALCE, JASON P

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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08/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/955,691

**Applicant(s)**

HARKNESS ET AL.

**Examiner**

Jason P. Salce

**Art Unit**

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5,24,26-28,30-33 and 50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24,26-28,30-33 and 50 is/are allowed.
- 6) ☒ Claim(s) 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Continued Examination*

1. In accordance with MPEP 1214.04 [R-3], "If the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner was reversed, he or she should submit the matter to the Technology Center (TC) Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new rejection. See MPEP § 1002.02(c) and MPEP § 1214.07. The TC Director's approval is placed on the action reopening prosecution".

With respect to the decision of the Board of Appeals dated 28 February 2007, the examiner has specific knowledge of the existence of a particular reference or references that indicate the non-patentability of the appealed claims. Prosecution on the merits of this application is reopened on claim 5, which is considered unpatentable for the reasons indicated below.

2. The examiner had previously rejected claim 5 using the Lu reference (**U.S. Patent No. 4,677,466**), which teaches receiving data that includes content provider identification data (**see Column 11, Lines 40-42 of the Lu Reference**), therefore upon the receiver of Lu receiving and processing the content provider identification data, the examiner interpreted these teachings as accessing a content provider. However, in light of the specification of the instant application, accessing the content provider facilitates actual communicate with the content provider (**see Pages 16-17 of the**

**specification of the instant application).** Therefore, the examiner has previous knowledge of the Aras reference and has applied a new grounds of rejection below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 5 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Aras et al. (U.S. Patent No. 5,872,588).

Referring to claim 5, Aras discloses a detection apparatus to identify a program (see Figure 4A or 4B in addition to Column 12, Lines 40-54 for a detection system used to identify a program at Column 17, Lines 26-30 by collecting AVI (audio-video interactive) information at home station 111 and transmitting the AVI information to a behavior collection center 121, where the behavior collection center uses the AVI identification number to identify the program).

Aras further discloses that the detection apparatus includes a tuner to tune to a program (see channel selection device 1558 in Figure 15 and discussed further at Column 24, Lines 61-64, which specifically states, "the channel selector functions

**as a tuner to tune the home station to the channel selected by the subscriber.**

**Typically the tuner receives many channels from which the subscriber selects**

**one**", and therefore the channel selection device 1558 clearly teaches a tuner to tune to a program).

Aras further discloses that the detection apparatus includes a meter coupled to the tuner (see AVI decoder 1559 (meter) coupled to the channel selection device 1558 (tuner) in Figure 15 and discussed further at Column 24, Line 64 through Column 25, Line 2).

Aras also discloses that the meter is used to record a media link embedded in the program (see Column 24, Line 65 through Column 25, Line 2 for the AVI decoder 1559 (meter) extracting/recording the embedded AVI information from the selected AVM material (selected program) and further note Figure 6(f) and Column 16, Lines 60-67 for further recording the extracted AVI information embedded in the selected program into a behavior collection table (BCT)) tuned by the tuner (see again channel selection device 1558 in Figure 15 and discussed further at Column 24, Lines 61-64).

Aras further discloses that the detection apparatus includes a program identifier (see Behavior Collection Center 121 in Figure 4A or 4B and further discussed at Column 12, Lines 40-54 and Column 17, Line 57 through Column 18, Line 9).

Aras also discloses that the program identifier is used to identify the program (see Column 17, Lines 57-61 for transmitting the collected AVI information (including the AVI identification number) to the BCC 121 and Column 17, Lines 26-30 for processing the transmitted AVI identification number to identify the program) tuned by the tuner (see again channel selection device 1558 in Figure 15 and discussed further at Column 24, Lines 61-64) based on the media link recorded by the meter (see again Column 24, Line 65 through Column 25, Line 2 for the AVI decoder 1559 (meter) extracting/recording the embedded AVI information from the selected AVM material (selected program) and Column 17, Lines 57-61 for transmitted the extracted information to the BCC 121, therefore the identified program is based on the media link (AVI identification number) recorded by the meter (AVI decoder 1559)).

Aras also discloses that the program identifier is also arranged to identify the program by accessing a content provider (see Column 17, Lines 28-30 for the BCC 121 using the AVI identification number to identify the program and Column 12, Lines 39-54 for the BCC 121 being integrated with the ITV server 103, Broadcast Server 101, the distribution node 107 or located at one or more of the above, therefore teaching that the identification of a program (by using the AVI identification number to identify the title of a program) is performed by accessing (by transmitting information) the BCC 121 which is located at one or all of three different content providers).

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***Allowable Subject Matter***

4. Claims 24, 26-28, 30-33 and 50 are allowed.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

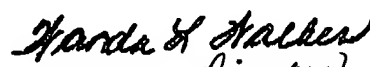
Jason P Salce  
Primary Examiner  
Art Unit 2623



July 25, 2007



JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600



TC 2600 Director